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In the Supreme Court of the United States

OCTOBER TERM, 1962.

No. 514.

JAMES ODDIE, EDWARD CWIERTNIEWICZ,
JOHN PENZAK, OSCAR KING,
HARRY C. BREMMER,
Petitioners,

vs.

ROSS GEAR AND TOOL COMPANY, INC.,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

RESPONDENT'S SUPPLEMENTAL BRIEF.

OWEN J. NEIGHBOURS,
JAMES M. NICHOLSON,
1350 Consolidated Building,
Indianapolis, Indiana,
Counsel for Respondents.

CADICK, BURNS, DUCK & NEIGHBOURS,
1350 Consolidated Building,
Indianapolis, Indiana,
Of Counsel.

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ARGUMENT.

Petitioners' Reply Brief urges that a recent decision of an arbitrator[1] demonstrates the necessity for the granting of a writ of certiorari herein. It is said that this decision is "* * * concrete evidence that the Sixth Circuit, in interpreting the collective bargaining contract in the instant case, laid down a general rule of interpretation. * * *"[2]

Although it seems axiomatic that the decision of an arbitrator hardly can be characterized as "concrete evidence" of the meaning of an opinion of a federal court of appeals, the opinion of the arbitrator in *Sivyer* was not in-

[1] *Sivyer Steel Casting Co.*, 39 Lab. Arb. 449 (1962).

[2] Petitioners' Reply Brief, p. 2.

tended to, and does not, demonstrate adherence to a "* * * new rule of collective bargaining contract interpretation laid down by the Sixth Circuit * * *."[3]

Although the arbitrator discussed both *Glidden*[4] and the opinion of the Sixth Circuit in the instant case, it is evident from the arbitrator's decisions, set forth in his Summary of Issues,[5] that he appropriately exercised his functions as arbitrator, and decided the issues presented by the grievances within the framework of the contract and the factual evidence presented by the union and the employer. The arbitrator in the *Sivyer* case analyzed the language of the contract there involved and found such language to be more closely analogous to the language of the Gemmer contract than to the language of the Glidden contract. As was his province, the arbitrator decided the case in light of the contract and the evidence before him.

Petitioners, in their Reply Brief, again confuse differing results with conflicting rules of law. This confusion is based upon their misconstruction of the opinion of the Court of Appeals for the Second Circuit in *Glidden* which they characterize as a "* * * rule that recognition clauses do not perform that function * * *" that is, the function of limiting employees' seniority recall rights.[6]

In *Glidden*, the court found the particular language employed in the preamble clause of *that* contract did not operate to establish fixed boundaries for the rights asserted. The Second Circuit did not establish a rule that

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[3] Petitioners' Reply Brief, p. 3.

[4] *Zdanok v. Glidden*, 288 F. 2d 99 (2d Cir. 1961), *cert. granted on other grounds*, 368 U. S. 814.

[5] 39 Lab. Arb. 449, 558-559.

[6] Pet. Reply Brief, p. 5.

recognition clauses do not function to limit rights under collective bargaining agreements. *Glidden was not concerned in any way with recognition clauses or the function of recognition clauses.* The clause the Second Circuit construed in *Glidden* was the *preamble* clause of that contract.[7] The court held that the particular language used in that clause of *that* contract did not limit the area within which rights thereunder could be exercised. Petitioners misconstrue *Glidden* when they assert[8] that it establishes a rule that recognition clauses do not perform a limiting function. Although the Second Circuit found that the specific terms used did not provide geographic limitations to the provisions of that contract, it is implicit in the court's extensive examination and analysis of the contract terms that it felt that a preamble clause could have defined an area for application of the contract if the parties had employed language manifesting such an intent. It is not held or suggested by the Second Circuit that recognition *or* preamble clauses do not perform the function of limiting rights under the contract.

Understandably counsel for Petitioners are hesitant to come to grips with the factual distinctions between the *Ross* and *Glidden* cases. In effect, they seek to establish a "rule of interpretation" that would *avoid* the intention of the parties to the Ross contract to limit it, in all its aspects, to the geographical area described. By failing to meet and answer the differences of fact, Petitioners have hoped to establish an issue of general importance and ap-

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[7] Petitioners also err on page 7 of their Reply Brief in describing *Metal Polishers Union v. Viking Equipment Co.*, 278 F. 2d 142 (3d Cir. 1960) as concerned with *recognition* clauses. That case was also concerned with the particular language employed in the *preamble clause* of that contract. This case is discussed on pp. 13-15 of Respondent's Brief.

[8] Pet. Reply Brief, p. 5.

plication that would require consideration by this Court, but ignoring these factual differences does not wipe them from the record of this case.

CONCLUSION.

The interpretation of the Gemmer contract by the Court of Appeals below was based upon the intention of the parties as determined from the terms of the Gemmer contract and its collective bargaining history. The court below, without question, appropriately decided the issues before it. The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

OWEN J. NEIGHBOURS,
JAMES M. NICHOLSON,
Counsel for Respondent.

Of Counsel:

CADICK, BURNS, DUCK & NEIGHBOURS.

November 26, 1962.

TABLE OF CASES.

Metal Polishers Union v. Viking Equipment Co., 278 F. 2d 142 (3d Cir. 1960) 3

Sivyer Steel Casting Co., 39 Lab. Arb. 449 (1962) 1, 2

Zdanok v. Glidden, 288 F. 2d 99 (2d Cir. 1961), *cert. granted on other grounds*, 368 U. S. 814 ..... 2, 3